

## **Current Banking Law Sections Corresponding to Proposed Changes to NC Banking Law**

### **Current Sections Corresponding to New Article 1A:**

#### Article 1.

#### Definitions.

#### **§ 53-1. "Bank," "surplus," "undivided profits," and other words defined.**

Except as otherwise specifically provided in this Chapter, the following definitions shall be applied to the terms used in this Chapter:

- (1) Bank. – The term "bank" shall be construed to mean any corporation, other than savings and loan associations, savings banks, industrial banks, and credit unions, receiving, soliciting or accepting money or its equivalent on deposit as a business.
- (1a) Branch. – The term "branch" means an office of any bank in which deposits are received, monies are paid, and loans are made. Any of the functions or services authorized to be engaged in by a bank may be carried out in a branch.
- (2) Demand Deposits. – The term "demand deposits" means all deposits, the payment of which can be legally required within 30 days.
- (3) Insolvency. – The term "insolvency" means:
  - a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business;
  - b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;
  - c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or
  - d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created.
- (3a) Limited Service Facility. – The term "limited service facility" means an office of a bank in which deposits are received, monies are paid, or other duties and functions of a teller are performed. Loan applications shall be taken in a limited service facility but notes may not be executed nor loan proceeds disbursed in a limited service facility.
- (4) Net Earnings. – The term "net earnings" means the excess of the gross earnings of any bank over the expenses and losses chargeable against such earnings during any dividend period.
- (5) Practical Banker. – The term "practical banker" means an officer or employee of a bank actively engaged in performing duties in managing or supervising or assisting in managing or supervising the conducting

of a banking business, including any such banker who is in a retired status from such duties.

- (6) Surplus. – The term "surplus" means a fund created pursuant to the provisions of this Chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.
- (7) Time Deposits. – The term "time deposits" means all deposits, the payment of which cannot be legally required within 30 days.
- (8) Undivided Profits. – The term "undivided profits" means the credit balance of the profit and loss account of any bank.
- (9) Unimpaired Capital Fund. – The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, undivided profits, reserve for contingencies and other capital reserves (excluding accrued dividends on preferred stock and limited life preferred stock), mandatory convertible instruments, allowance for possible loan losses, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank. (1921, c. 4, s. 1; C.S. s. 216(a); 1927, c. 47, s. 1; 1931, c. 243, s. 5; 1945, c. 743, s. 1; 1967, c. 789, s. 21; 1979, c. 483, s. 2; 1983, c. 214, s. 1; 1985, c. 677, s. 3; 1989, c. 187, s. 1; 1995, c. 129, s. 1; 2001-263, s. 6.)

#### Article 10.

##### Penalties.

**(This section is currently included within Article 10)**

**§ 53-127. Unlawful use of terms indicating that business is bank or trust company; unauthorized use of name of banking entity.**

- (a) Definitions. The following definitions apply in this section.
  - (1) Banking. – The business of receiving or soliciting money on deposit.
  - (2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks

under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law. (1921, c. 4, s. 81; C.S., s. 224(c); 1931, c. 243, s. 5; 1943, c. 543; 1985, c. 677, s. 6; 1989 (Reg. Sess., 1990), c. 805, s. 1; 1991, c. 680, s. 4; 1993, c. 539, s. 422; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16; 2005-162, s. 1.)

## **Current Sections Corresponding to New Article 2A:**

### Article 8.

#### Commissioner of Banks and State Banking Commission.

#### **§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.**

(a) On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint a Commissioner of Banks subject to confirmation by the General Assembly by joint resolution. The name of the Commissioner of Banks shall be submitted to the General Assembly on or before February 1, of the year in which the term of his office begins. The term of office for the Commissioner of Banks shall be four years. In case of a vacancy in the office of Commissioner of Banks for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the Commissioner of Banks shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 19 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers, 11 persons selected primarily as representatives of the borrowing public, and two chief executive officers of State savings institutions. The person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent ( $\frac{1}{2}$  of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. The subsistence and travel expenses shall be paid from the fees collected from the examination of banks as provided by law.

(c) The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

A quorum shall consist of a majority of the total membership of the Banking Commission. A majority vote of the members qualified with respect to a matter under review present at that meeting shall constitute valid action of the Banking Commission. The State Treasurer and all disqualified members who are present shall be counted to determine whether a quorum is present at a meeting.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Banking Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of the Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The petition for judicial review shall be entitled "(insert name) Petitioner v. State of North Carolina on Relation of the Banking Commission." A copy of the petition for judicial review shall be served upon

the Commissioner of Banks pursuant to G.S. 150B-46. The petition shall be placed on the civil issue docket of the court and shall have precedence over other civil actions. Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County. The standard of review of a petition for judicial review of a final order of the Banking Commission shall be as provided in G.S. 150B-51(b). (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2; 1967, c. 789, s. 16; 1969, c. 844, s. 6; c. 920; 1979, c. 478, s. 1; 1981, c. 884, s. 1; 1983, c. 328, ss. 1, 3; 1985, c. 318; 1989, c. 781, s. 41.1; 1995, c. 490, s. 9; 2001-193, s. 14; 2003-63, s. 2; 2006-203, s. 16; 2009-57, s. 1.)

#### **§ 53-93. Powers and duties of Commissioner.**

The Commissioner of Banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner. (1931, c. 243, s. 2; 2003-63, s. 3.)

##### **§ 53-93.1. Deputy commissioners.**

(a) The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks.

Irrespective of the conditions under which the chief deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such chief deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

(b) In addition to the chief deputy commissioner authorized by subsection (a) of this section, the Commissioner of Banks may appoint deputy commissioners to serve at the Commissioner's pleasure. The deputy commissioners authorized by this subsection shall perform any duties and exercise any powers directed by the Commissioner. (1959, c. 273; 1983, c. 717, s. 8; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1989, c. 752, s. 39(c); 1995, c. 129, s. 20; 2001-193, s. 1.)

#### **§ 53-94. Right to sue and defend in actions involving banks; liability to suit.**

As Commissioner of Banks he is empowered to sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under

his supervision; but nothing herein shall be construed to render the Commissioner of Banks liable to be sued except as other departments and agencies of the State may be liable under the general law. (1931, c. 243, s. 3.)

**§ 53-96. Salary of Commissioner; legal assistance.**

The salary of the Commissioner of Banks shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Attorney General shall assign an attorney on his staff to work full time with the Banking Commission. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The Commission shall fully reimburse the Department of Justice for the compensation, secretarial support, equipment, supplies, records, and other property to support this attorney. (1931, c. 243, s. 6; 1957, c. 541, s. 3; 1979, 2nd Sess., c. 1137, s. 53; 1983, c. 717, s. 9; 1991 (Reg. Sess., 1992), c. 1039, s. 22; 1993, c. 321, s. 206(b), c. 561, s. 83.)

**§ 53-96.1. Salaries, promotions, and leave of employees of the Office of the Commissioner of Banks.**

(a) Repealed by Session Laws 2007-484, s. 9(a), effective August 30, 2007.

(b) The exemptions to Chapter 126 of the General Statutes authorized by G.S. 126-5(c11) for the Office of the Commissioner of Banks and its employees shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Commissioner of Banks in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Commissioner of Banks may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies. (2005-284, s. 1; 2007-484, s. 9(a).)

**§ 53-98. Seal of office of Commissioner; certification of documents.**

The Commissioner of Banks shall have a seal of office bearing the legend "State of North Carolina – Commissioner of Banks," with such other appropriate device as he may adopt. (1931, c. 243, s. 9.)

**§ 53-99. Official records.**

(a) The Commissioner of Banks shall keep a record in his office of his official acts, rulings, and transactions which, except as hereinafter provided, shall be open to inspection, examination and copying by any person.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner of Banks shall be confidential and shall not be disclosed or be subject to public inspection:

- (1) Records compiled during or in connection with an examination, audit or investigation of any bank, banking office, bank holding company or

its nonbank subsidiary, or trust department which operates or has applied to operate under the provisions of this Chapter;

- (2) Records containing information compiled in preparation or anticipation of litigation, examination, audit or investigation;
- (3) Records containing the names of any borrowers from a bank or revealing the collateral given by any such borrower: Provided, however, that every report of insider transactions made by a bank which report is required to be filed with the appropriate State or federal regulatory agency by either State or federal statute or regulation shall be filed with the Commissioner of Banks in a form prescribed by him and shall be open to inspection, examination and copying by any person;
- (4) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by an agency of the United States, or jointly by such agency and the Commissioner of Banks, if such records would be confidential under federal law or regulation;
- (4a) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by a regulatory agency of jurisdiction of the region defined in G.S. 53-210(11) if these records would be confidential under that jurisdiction's law or regulation;
- (5) Records of information and reports submitted by banks to federal regulatory agencies, if such records would be confidential under federal law or regulation;
- (6) Records of complaints from the public received by the banking department and concerning banks under its supervision if such complaints would or could result in an investigation;
- (7) Records of examinations and investigations of consumer finance licensees;
- (7a) Records of examinations and investigations of licensees under the Money Transmitters Act, Article 16A of this Chapter;
- (7b) Records of applications, examinations, and investigations of applicants, licensees, and exempt persons under the Mortgage Lending Act, Article 19A of this Chapter;
- (7c) Records of applications and investigations of registrants under the Refund Anticipation Loan Act, Article 20 of this Chapter;
- (8) Records of pre-need burial contracts maintained pursuant to Article 13B of Chapter 90 of the General Statutes including investigations of such contracts and related credit inquiries;
- (9) Any letters, reports, memoranda, recordings, charts, or other documents which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (8).



(c) Notwithstanding the provisions of subsection (b), the Commissioner of Banks may, by written agreement with any state or federal regulatory agency, share with that agency any confidential information set out in subsection (b) on the condition that the information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency.

(d) Nothing in this section of the law shall prohibit a bank, upon approval of the Commissioner of Banks, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by Chapter 53 of the General Statutes, the bank's regulatory rating prepared by the Commissioner's office. Provided however, the insurance underwriter must agree in writing to maintain the confidentiality of such information and to not disclose the same in any manner whatsoever. (1931, c. 243, s. 10; 1977, 2nd Sess., c. 1181, s. 2; 1979, c. 255, s. 1; 1989, c. 9, s. 1; 1989 (Reg. Sess., 1990), c. 881, s. 3; 1995, c. 129, s. 21; 2001-393, s. 3; 2001-443, s. 3; 2004-171, s. 3.)

#### **§ 53-101. Clerical help.**

The Commissioner of Banks is empowered to employ sufficient clerical and secretarial help, and other necessary labor to conduct the affairs of the Commissioner's office efficiently and effectively. (1931, c. 243, s. 12; 2005-284, s. 2.)

#### **§ 53-104. Commissioner of Banks shall have supervision over, etc.**

Every bank or corporation transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this State, and any individual, partnership, association, or corporation which undertakes or attempts to transact the business of banking, or do a banking business in connection with any other business, shall be under the supervision of the Commissioner of Banks. It shall be his duty to execute and enforce through the State bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this Chapter. For the more complete and thorough enforcement of the provisions of this Chapter, the State Banking Commission is hereby empowered to promulgate such rules not inconsistent with the provisions of this Chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure safe and conservative management of the banks under its supervision taking into consideration the appropriate interest of the depositors, creditors, stockholders, and the public in their relations with such banks. All banks doing business under the provisions of this Chapter shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the State Banking Commission. (1921, c. 4, s. 63; C.S., s. 222(a); 1931, c. 243, s. 5; 1939, c. 91, s. 2; 1945, c. 743, s. 1; 1979, c. 483, s. 10.)

#### **§ 53-107.1. Administrative orders; penalties for violation.**

(a) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to:

- (1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and

- (2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(c) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section.

The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 677, s. 6; 1998-215, s. 29.)

#### **§ 53-115. State Banking Commission to adopt rules.**

(a) The State Banking Commission is hereby authorized, empowered and directed to make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner of Banks under this Chapter.

(b) The rule-making authority conferred on the State Banking Commission by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter. (1933, c. 120, s. 4; 1939, c. 91, s. 2; 1979, c. 483, s. 15; 2004-171, s. 4.)

#### **Article 9.**

##### **Bank Examiners.**

(This section is currently included within Article 9)

#### **§ 53-122. Fees and assessments.**

(a) For the purpose of operating and maintaining the office of the Commissioner of Banks, banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments into the office of the Commissioner of Banks within 10 days after the assessment:

- (1) Banks. – Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the

Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars (\$50,000,000) of assets, or fraction thereof, ten thousand dollars (\$10,000); (ii) on assets over fifty million dollars (\$50,000,000), but not more than two hundred fifty million dollars (\$250,000,000), fourteen dollars (\$14.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars (\$250,000,000), but not more than five hundred million dollars (\$500,000,000), eleven dollars (\$11.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (iv) on assets over five hundred million dollars (\$500,000,000), but not more than one billion dollars (\$1,000,000,000), seven dollars (\$7.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (v) on assets over one billion dollars (\$1,000,000,000), but not more than ten billion dollars (\$10,000,000,000), four dollars (\$4.00) per one hundred thousand dollars (\$100,000), or fraction thereof; and (vi) on assets over ten billion dollars (\$10,000,000,000), two dollars (\$2.00) per one hundred thousand dollars (\$100,000), or fraction thereof. Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar (\$1.00) per one hundred thousand dollars (\$100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

- (2) Consumer Finance Licensees. – Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars (\$18.00) per one hundred thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars (\$500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.
- (3) Special Assessment. – If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees.

(b) The State Banking Commission may by rule set the amount to be collected for processing any application or proceeding required by law to be filed with the Commissioner and for obtaining copies of any public record of the Banking Commission.

(c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee per day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the case is tried and thereafter charged in bill of costs as are other costs incurred in the matter.

(d) The total expenses of the office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided the expenses may exceed the total fees collected in any year when surplus funds are available.

(e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in this section. If the estimated fees and assessments provided for under this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. The State Banking Commission shall report to the Joint Legislative Commission on Governmental Operations its conclusion that the estimated fees and assessments should be reduced or increased. Any reduction or increase of estimated fees and assessments provided for under this section shall become effective July 1 of the next fiscal year.

(f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission. (1921, c. 4, s. 77; C.S., s. 223(f); 1927, c. 47, s. 15; 1931, c. 243, s. 5; 1943, c. 733; 1945, c. 467; 1955, c. 640, ss. 1, 2; 1957, c. 1443, s. 1; 1969, c. 229; 1979, c. 483, s. 1; 1981, c. 671, s. 13; 1989, c. 561, s. 1; 1997-285, s. 1; 2007-55, s. 1; 2009-451, s. 14.20.)

## **Current Sections Corresponding to New Article 3A:**

### Article 2.

#### Creation.

#### **§ 53-2. How incorporated.**

Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

- (1) The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this State or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion.
- (2) The location of its principal office in this State.
- (3) Whether it will do trust business as well as the business of a commercial bank.
- (4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars (\$2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules to keep any original required minimum capital funds intact to the

end that they remain in and with the bank as a protection for depositors.

- (5) The names and post-office addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.
- (6) Period, if any, limited for the duration of the company. (1921, c. 4, s. 2; C.S., s. 217(a); 1927, c. 47, s. 2; 1929, c. 72, s. 1; 1947, c. 781; 1953, c. 1209, s. 3; 1963, c. 793, s. 2; 1967, c. 789, s. 1; 1985, c. 677, s. 4; 1989, c. 187, s. 2; c. 770, s. 42; 1989 (Reg. Sess., 1990), c. 1024, s. 44; 2001-263, s. 2.)

**§ 53-3. Certificate of incorporation; how signed, proved and filed.**

The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved or acknowledged before an officer duly authorized under the laws of this State to take proof or acknowledgment of deeds, and shall be filed in the office of the Secretary of State. The Secretary of State shall forthwith transmit to the Commissioner of Banks a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the Commissioner of Banks as hereinafter provided. (1921, c. 4, s. 3; C.S., s. 217(b); 1931, c. 243, s. 5.)

**§ 53-4. Examination by Commissioner; when certification to be refused; review by Commission.**

Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he finds that

- (1) The proposed corporation is formed for any other than legitimate banking business; or
- (2) That the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation and directors, officers, and other managerial officials are not such as to command the confidence of the community in which said bank is proposed to be located; or
- (3) That the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or
- (4) That the name of the proposed corporation is likely to mislead the public as to its character or purpose; or
- (5) That the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public.

Upon such certification the Secretary of State shall issue and record such certificate of incorporation.

Notwithstanding any other provisions of this section, the Commissioner of Banks shall not make the certification to the Secretary of State described above until he shall have ascertained that the establishment of such bank will meet the needs and promote the convenience of the community to be served by the bank. Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; C.S., s. 217(c); 1931, c. 243, s. 5; 1953, c. 1209, s. 1; 1963, c. 793, s. 1; 1967, c. 789, s. 2.)

#### **§ 53-5. Certificate of incorporation, when certified.**

Upon receipt of such certificate from the Commissioner of Banks, the Secretary of State shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office in a book to be kept for that purpose, and known as the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the register of deeds of the county where the principal office of said corporation in this State shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the Commissioner of Banks, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State or the register of deeds of the county in which the same is recorded, or by the Commissioner of Banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the Secretary of State shall be void: Provided, however, the Commissioner of Banks may for cause extend the limitation herein imposed. (1921, c. 4, s. 5; C.S., s. 217(d); 1931, c. 243, s. 5; 1967, c. 823, s. 3.)

#### **§ 53-6. Payment of capital stock.**

The capital stock of every bank shall be fully paid in, in cash, before it shall be authorized by the Commissioner of Banks to commence business and the full payment in cash of the capital stock shall be certified to the Commissioner of Banks under oath by the president, cashier, or secretary of the said bank. (1921, c. 4, s. 6; C.S., s. 217(e); 1927, c. 47, s. 3; 1931, c. 243, s. 5; 1989, c. 20.)

#### **§ 53-7. Statement filed before beginning business.**

Before such company shall begin the business of banking, banking and trust, fiduciary, or surety business, there shall be filed with the Commissioner of Banks a statement under oath by the president, cashier, or secretary, containing the names of all the directors and officers, with the date of their election or appointment, term of office,

residence, and post-office address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money. (1921, c. 4, s. 7; C.S., s. 217(f); 1931, c. 243, s. 5; 1989, c. 187, s. 3.)

**§ 53-8. Authorized to begin business.**

Upon filing of such statement, the Commissioner of Banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the Commissioner of Banks that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, he shall give to such corporation a certificate signed by the Commissioner of Banks, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business. (1921, c. 4, s. 8; C.S., s. 217(g); 1931, c. 243, s. 5.)

**§ 53-9. Transactions preliminary to beginning business.**

No such corporation shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the Commissioner of Banks. (1921, c. 4, s. 9; C.S., s. 217(h); 1931, c. 243, s. 5.)

**§ 53-9.1. Deposit insurance.**

(a) Notwithstanding any other provision of law, no bank established under this Article shall engage in the business of banking without first securing insurance on its deposits from the Federal Deposit Insurance Corporation or any successor corporation created by an act of Congress.

(b) In order to secure deposit insurance as required by this section, a bank may enter into such contracts, incur such obligations, and generally do anything as may be necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges that may at any time be available to banks or to their depositors, creditors, stockholders, conservators, receivers, or liquidators, as provided in Section 8 of the Federal Banking Act of 1933 (Section 12B of the Federal Reserve Act as amended) or in any other act or resolution of Congress, to aid, regulate, or safeguard banking institutions and their depositors. In order to secure deposit insurance as required by this section, a bank may also subscribe for and acquire stock, debentures, bonds, or any other securities of the Federal Deposit Insurance Corporation and may comply with the lawful regulations and requirements that may be imposed by the Federal Deposit Insurance Corporation. (1989, c. 187, s. 4.)